

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7

BKY No. 01-45284-NCD

Xtratyme Technologies, Inc.,

Debtor.

John R. Stoenner, Trustee,

ADV. No. 04-4093-NCD

Plaintiff,

vs.

**ANSWER TO COMPLAINT
TO AVOID PREFERENTIAL
TRANSFER AND
COUNTERCLAIM**

Farmgard Products Corporation,

Defendant.

Defendant, Farmgard Products Corporation, answers the Complaint of Plaintiff,
John R. Stoenner, Trustee, as follows:

FIRST DEFENSE

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant answers the specific allegations of Plaintiff's Complaint as follows:

1. Admit the allegations of paragraph 1.
2. Admit the allegations of paragraph 2.
3. Admit the allegations of paragraph 3.

4. Admit the allegations of paragraph 4.
5. Admits the allegations of paragraph 5.
6. Denies the allegations of paragraph 6.
7. Denies the allegations of paragraph 7.
8. As to the allegations of paragraph 8, admit that within one year of the filing of the bankruptcy, the Defendant received payments from the Debtor, and denies the remaining allegations of paragraph 8.
9. Defendant restates its answers to the allegations in paragraphs 1 through 8, inclusive.
10. As to the allegations of paragraph 10, admit that within one year prior to the filing of the Petition, Defendant received payments from the Debtor, and denies the remaining of paragraph 10.
11. Denies the allegations of paragraph 11.
12. Denies the allegations of paragraph 12.
13. Denies the allegations of paragraph 13.
14. Denies the allegations of paragraph 14.
15. Denies the allegations of paragraph 15.

THIRD DEFENSE

The Plaintiff's Complaint is barred by the following affirmative defenses:

1. Transfers made by the Plaintiff to the Defendant were for the lease of equipment made in the ordinary course of the business and financial affairs of the Debtor and the Defendant and in the ordinary course of business for similar transactions, and made in accordance with ordinary business terms.

2. The Defendant provided a new value to the Defendant for the transfers.

3. The payments made by the Debtor to the Defendant were a contemporaneous exchange for new value and substantially contemporaneous with that new value.

4. The payments by the Debtor to the Defendant were made in good faith.

WHEREFORE, Defendant prays that the Plaintiff's Complaint be dismissed with prejudice and on the merit, and that Defendant be entitled to recover its reasonable costs and attorneys' fees in defending this action.

COUNTERCLAIM

Defendant, Farmgard Products, Inc., complains of Plaintiff, John R. Stuebner, Trustee, for the bankruptcy estate, and states:

1. The Debtor and the Defendant entered into an agreement under which Defendant agreed to lease to the Debtor certain equipment used in the regular business operations of the Debtor.

2. A dispute arose between the Debtor and Defendant as to the use and payment for that equipment which became the subject of an action in Minnesota State Court.

3. Pursuant to an agreement between the parties and an Order entered in *Farmgard Products, Inc., v. Xtratyme Technologies, Inc.*, Court File No. C5-00-777, First Judicial District Court, McLeod County, Minnesota, the Debtor was directed to make regular monthly payments to Farmgard Products on the subject leases.

4. Prior to the filing of the bankruptcy Petition in this matter, Debtor defaulted on the payments due under the leases as follows:

- a. DS Capital: Lease # 000008065 Due Date: 08/23/01
- b. Balboa Capital: Lease # 9-10296-1 Due Date: 09/01/01
 Lease # 9-1103-1 Due Date: 09/01/01
- c. Ascend Credit: Lease # 9365-01 Due Date: 09/01/01
- d. The CIT Group: Lease #900-0000192-000 Date Due: 08/23/01
- e. Hutchinson Telephone: July, 2001

5. The leases remained in default up to the time of the filing of the bankruptcy petition in this action.

6. As a result of the pre-petition defaults under the relative leases, Farmgard Products is entitled to a pre-petition claim and recovery from the Debtor an amount in excess of the \$25,000.

SECOND CLAIM

7. Defendant restates the allegations of paragraph 1 through 6, inclusive, of this Counterclaim.

8. Subsequent to the Petition date, the Debtor continued to use some of the equipment which was subject to the pre-petition leases without payment to the Defendant.

9. As a result of the Debtor's post-petition use of some of the leased equipment, the Defendant is entitled to a post-petition administrative claim in an amount in excess of \$10,000.

10. As a result of the Debtor's post-petition use of the Defendant's leased equipment, Defendant is entitled to an offset against the claims asserted by the Trustee in this proceeding in an amount in excess of \$10,000.

WHEREFORE, Defendant, Farmgard Products, Inc., prays for entry of judgment against the Plaintiff in the above-entitled action as follows:

1. On Count 1, for a determination of a pre-petition claim in an amount in excess of \$50,000.
2. On Count 2, for a determination and payment of a post-petition administrative claim in an amount in excess of \$10,000.
3. On Count Two, for an offset against the claims of the Trustee in this adversary proceeding in an amount in excess of \$10,000.
4. For such further relief as the Court deems just and equitable under the circumstances.

Dated this 9th day of April, 2004.

/e/ Thomas P. Melloy
Thomas P. Melloy
I.D. No. 191425
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Attorneys for Defendant, Farmgard
Products, Inc.

STATE OF MINNESOTA }
 } ss.
COUNTY OF STEARNS }

AFFIDAVIT OF SERVICE
VIA U.S. MAIL

Jean M. Eisenschenk of the City of St. Cloud, County of Stearns, State of Minnesota, being duly sworn, that on the 9th day of April, 2004, she served the following document:

Answer to Complaint to Avoid Preferential Transfer and Counterclaim

on the following by enclosing a true and correct copy of said document in an envelope, postage prepaid, and by depositing, and mailing same in the post office at St. Cloud, Minnesota, addressed to said individual:

JOHN R. STOEBNER
TRUSTEE
ONE FINANCIAL PLAZA SUITE 2500
120 SOUTH SIXTH STREET
MINNEAPOLIS MN 55402

/e/ Jean M. Eisenschenk
Jean M. Eisenschenk

Subscribed and sworn to before me
this 9th day of April, 2004.

/e/ Trudy M. Wiechmann
Notary Public

GP:1571817 v1